

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BENJAMIN YOCUM & HEATHER LTD, <i>et al.</i>)	CASE NO.: 1:17-CV-00850
)	
Plaintiffs,)	Judge Michael R. Barrett
vs.)	
)	Magistrate Judge
BLACK WOLF CONSULTING, INC., <i>et al.</i>)	Stephanie K. Bowman
)	
Defendants.)	

**THIRD JOINT STATUS REPORT REGARDING
RELATED DEPARTMENT OF LABOR LITIGATION
U.S. DISTRICT COURT, N.D. ILL., CASE NO.: 1:17-CV-07931**

Pursuant to the May 30, 2018, Memorandum Opinion and Order of United States Magistrate Judge Stephanie K. Bowman [Doc.#17], Plaintiffs, Benjamin Yocum & Heather, LTD., Thomas R. Yocum, Kathryn K. Mecklenborg, Jose Pedro Santos, Deborah L. Evans, Donna H. Moore, and Anthony J. Iaciofano, and Defendant Benefit Plan Administrators, Inc. hereby jointly provide the following third status update regarding the Department of Labor litigation filed against AEU Benefits, LLC, and other plan fiduciaries and administrators in the U.S. District Court for the Northern District of Illinois, *R. Alexander Acosta, Secretary of Labor, United States Department of Labor v. AEU Benefits, LLC, et al.*, case number 1:17-CV-007931 (“the DOL action”).

The DOL action continues to proceed against all defendants including AEU Benefits, LLC, AEU Holdings, LLC, Black Wolf Consulting, Inc., AEU Holdings, LLC Employee Benefit Plan, and others, with the exception of defendant SD Trust Advisors, LLC as noted further below.

On November 21, 2018, defendants AEU Holdings, LLC and AEU Benefits, LLC filed an Amended Cross-Claim and Third-Party Complaint to add a Cross-Claim against SD Trust Advisors, LLC, as well as restate its prior Cross-Claim against Black Wolf Consulting, Inc. and its prior Third-Party Complaint against Rodney Maynor, Veritas PEO, LLC, James D'Iorio, Charles LaMantia, Rick Wilson, Wilson Benefits Services, LLC, and Tall Tree Administrators, LLC.

The docket does not reflect any changes in the Scheduling Order previously issued in the DOL action and attached to our prior Joint Status Report to this Court [Doc.#20]. The Illinois Court noted repeatedly that the Department of Labor was unaffected by the recent federal government shutdown, so no dates or deadlines were altered or amended as a result.

On January 11, 2019, a Consent Order And Judgement [Doc.#280] was entered granting judgement in favor of the Department of Labor on its claims against SD Trust Advisors, LLC and the principal of that company, non-party Thomas Stoughton. Stoughton voluntarily submitted to the jurisdiction of the Court and the terms of the Consent Order And Judgement.

That Consent Order And Judgement resolves all matters in controversy between the Department of Labor and SD Trust Advisors, with the exception of possible sanctions pursuant to ERISA §502(1), 29 U.S.C. §1332(1). It permanently enjoins SD Trust Advisors and Stoughton from violating any ERISA provision and prohibits SD Trust Advisors and Stoughton from serving as a fiduciary or service provider to any ERISA-covered plan. The Order further requires SD Trust Advisors and Stoughton to cooperate with the Department of Labor in connection with the continuing litigation and any future lawsuit that may be filed by the court-appointed Independent Fiduciary. The Order also requires the payment of \$175,000 by Stoughton via a Security Deed on

certain real property located in Atlanta. Upon completion of that payment, all claims by the Department of Labor against SD Trust Advisors and Stoughton are settled and released.

South Carolina litigant Hire Quest, LLC intervened in the DOL action seeking clarification of the Court's prior Stay Order, and seeking leave to proceed with its lawsuit in the U.S. District Court for the District of South Carolina against a number of defendants named in the DOL action and other parties, based upon the contention Hire Quest is not seeking to recover Plan Assets. On February 13, 2019, the Court granted the motion and permitted the South Carolina litigation to proceed as to the liability of HUB International Midwest Limited, Clint Anderson, Ed McConnell, Assurance Agency Ltd., Capitol Administrators, Inc., Black Wolf Consulting, Inc., Rod Maynor, Tall Tree Administrators, LLC, Benefit Plan Administrators, Inc., Wilson Benefits, Veritas Health Systems Administrator and Insurance Services, Inc., AEU Benefits, LLC, and AEU Holdings. [Doc.#302] The Order further provides that in the event Hire Quest settles any claim or receives a judgement in the South Carolina litigation, it must submit to the Secretary of Labor and the court-appointed Independent Fiduciary a list of the assets to be applied to the settlement or judgement along with an explanation demonstrating why such assets are not part of the AEU Plan and/or Participating Plans. Following the opportunity for objections by the DOL and the Independent Fiduciary and a possible hearing in the DOL hearing, the Illinois Court may issue an Order as to whether the disputed assets are Plan assets covered by the Stay Order or whether such assets may be used for purposes of settling or satisfying a judgement in the Hire Quest suit. The Order also clarified that the Illinois Court's prior All Writs Stay Order otherwise remains in full effect pending final disposition of the DOL action or until further order of that Court.

Lastly, the Independent Fiduciary filed a Thirteenth Quarterly Report on February 20, 2019 [Doc.#303]. That Report largely reflects the Independent Fiduciary's continued efforts to marshal

and control Plan assets and address questions and concerns of providers and members. The Report also describes the Independent Fiduciary's continuing efforts to gather information and documentation regarding the AEU Plans. It reports that 30,000 medical claims determination statements were issued in the summer of 2018, and the Independent Fiduciary has received over 1,700 appeals, 128 proof of claim forms, and over 200 claims for refunds. A copy of that Thirteenth Report is attached hereto as Exhibit A for the Court's reference.

<p>Respectfully submitted,</p> <p><u>/s/ Patrick M. O'Neill</u> <u>(per 02/25/19 email auth.)</u></p> <p>Bradford C. Weber, Esq. (#0068724) Patrick M. O'Neill, Esq. (#0062519) Benjamin, Heather, Iacofano & Bitter, LLC The American Book Building 300 Pike Street, Ste. 500 Cincinnati, OH 45202-4222 Telephone: (513) 721-5672 Facsimile: (513) 562-4388 Email: bcweber@bhiblaw.com pmoneill@bhiblaw.com <i>Counsel for Plaintiffs</i></p>	<p><u>/s/ Chad E. Willits</u></p> <p>Chad E. Willits, Esq. (#0066541) Ian D. Mitchell, Esq. (#0090643) Reminger Co., LPA 525 Vine Street, Ste. 1700 Cincinnati, OH 45202 Telephone: (513) 455-4024 Facsimile: (513) 721-2553 Email: cwillits@reminger.com imitchell@reminger.com <i>Counsel for Defendant Benefit Plan Administrators, Inc.</i></p>
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